

52.249-12

Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(1) Any related contract of the Contractor may be equitably adjusted if it provides for such an adjustment and if it is affected by a Notice of Termination under this clause. The Government shall not be liable to the Contractor for damages or loss of profits because of any Notice of Termination issued under this clause.

(End of clause)

Alternate I (SEP 1996). If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, delete subparagraph (k)(2) from the basic clause.

[48 FR 42478, Sept. 19, 1983, as amended at 61 FR 39224, July 26, 1996; 69 FR 17750, Apr. 5, 2004]

52.249-12 Termination (Personal Services).

As prescribed in 49.505(b), insert the following clause in solicitations and contracts for personal services (see part 37):

TERMINATION (PERSONAL SERVICES) (APR 1984)

The Government may terminate this contract at any time upon at least 15 days' written notice by the Contracting Officer to the Contractor. The Contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days' written notice to the Contracting Officer.

(End of clause)

52.249-13 Failure to Perform.

As prescribed in 49.505(c), insert the following clause in facilities contracts

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except facilities use contracts with nonprofit educational institutions:

FAILURE TO PERFORM (APR 1984)

(a) Subject to the Excusable Delays clause (if included in this contract), if the Contractor fails to perform this contract under its terms, the Contracting Officer shall give the Contractor written notice stating the failure. Thereafter, regardless of any other provision of this contract, the Contractor shall not be entitled to an equitable adjustment under either this contract or any related contract, to the extent the equitable adjustment arises from the Contractor's failure to perform or from any reasonable remedial action taken by the Contracting Officer based upon the failure.

(b) The failure of the Government to insist, in one or more instances, upon the performance of any term of this contract is not a waiver of the Government's right to future performance of such term, and the Contractor's obligation for future performance of such term shall continue in effect.

(c) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

52.249-14 Excusable Delays.

As prescribed in 49.505(d), insert the following clause in solicitations and contracts for supplies, services, construction, and research and development on a fee basis whenever a cost-reimbursement contract is contemplated. Also insert the clause in time-and-material contracts, labor-hour contracts, consolidated facilities contracts, and facilities acquisition contracts. When used in construction contracts, substitute the words *completion time* for *delivery schedule* in the last sentence of the clause. When used in facilities contracts, substitute the words *termination of work* for *termination* in the last sentence of the clause.

EXCUSABLE DELAYS (APR 1984)

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8)